

FILED
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

'07 JAN -9 PM 05

RYAN KERWIN

VS.

LT. WILLIAM MCCONNELL

: CASE #05-93 ERIE

:

: MAGISTRATE JUDGE SUSAN BAXTER

:

: DISTRICT JUDGE SEAN MCLAUGHLIN

MOTION FOR SPEEDY DISPOSITION

1. On December 14, 2006 plaintiff filed a motion for speedy disposition that, among other things, asked the court to file its report and recommendation on the defendant's motion for summary judgment before January 7, 2007. (Doc. #71)
2. Plaintiff specifically requested that the report and recommendation be issued by that date because it is the date dispositive motions are due on the case from which the retaliation plaintiff is suing for in the instant case derived (Kerwin vs. Varner, case #1:CV-03-2253, Middle District), and plaintiff had intended on using the court's findings on the retaliation case as evidence to show consciousness of guilt in the other.
3. On December 20, 2006 the court denied plaintiff's request for speedy disposition in this regard and ruled that the motion for summary judgment would be placed back on the docket as of that date (it was dismissed without prejudice on November 29, 2006 ; Doc. #64) and be decided in due course. (Doc. #72)
4. Because plaintiff had specifically requested that the report and recommendation on the motion for summary judgment be issued before January 7, 2007 any objections to that order would have been moot since there was absolutely no way that

the district judge would be able to rule on them by January 7, 2007.

5. As a result, plaintiff now files the instant motion for speedy disposition so that if it is denied objections can be pursued and if necessary, a mandamus.
6. The defendant in this case filed his motion for summary judgment on March 3, 2006 (Doc. #52) and plaintiff filed his response brief on March 21, 2006 (Doc. #57).
7. The court then waited 8 months after plaintiff filed his response brief to dismiss the defendant's motion for summary judgment without prejudice (Doc. #64) only to place it back on the docket a month later and start the summary judgment process all over again. (Doc. #72)
8. Since it took 9 months just to start summary judgment all over again it is safe to say it will take another 9 months for the court to finally issue its report and recommendation on the matter. Then, regardless of which party benefits from the report and recommendation, the other party will inevitably file objections to the district judge and who knows how long that will take.
9. Under normal circumstances, it does not take 2 years for a motion for summary judgment to be resolved and at its current pace that is exactly how long it is going to take in this case.
10. Furthermore, this is not a complex case that involves difficult legal issues or multiple defendants. The pending motion for summary judgment only involves a failure to state a claim and qualified immunity defense involving 1 defendant.
11. The prior delays in this case has already caused plaintiff

uncorrectable prejudice in that he is now unable to present the court's findings on the retaliation in this case at the summary judgment stage on the other case (Kerwin vs. Varner).

12. The prior delays as well as any further delays are also prejudicial in that the memories of plaintiff's witnesses in the instant case may fade with time if the witnesses do not end up becoming unavailable altogether due to certain occurrences that may in fact occur over the passage of time. (Ex: death, inability to locate, fugitive from justice, etc..) After all, the incidents that give rise to plaintiff's current cause of action began over 3½ years ago.

WHEREFORE, plaintiff respectfully requests that this honorable court issue its report and recommendation on the defendant's motion for summary judgment in an expeditious manner.

Respectfully submitted,

1/6/07

Date

Ryan Kerwin

Ryan Kerwin
DZ0246
S.C.I. Albion
10745 Route 18
Albion, PA. 16475-0002

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CERTIFICATE OF SERVICE

I hereby declare that I mailed a true and correct copy of the attached Motion for the Court to Enter Summary Judgment in Favor of the Non-Moving Party, the brief in support thereof and the Motion for Speedy Disposition to the defendant's counsel at the following address:

Mariah Passarelli
Office of Attorney General
Manor Complex
564 Forbes Ave.
Pittsburgh, PA. 15219

1/6/07

Date

Ryan Kerwin

Ryan Kerwin
DZ0246
S.C.I. Albion
10745 Route 18
Albion, PA. 16475-0002